

COPYRIGHT ROYALTY JUDGES
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In re

DISTRIBUTION OF CABLE ROYALTY FUNDS	DOCKET NO. 16-CRB-0009 CD (2014-17)
DISTRIBUTION OF SATELLITE ROYALTY FUNDS	DOCKET NO. 16-CRB-0010 SD (2014-17)

JOINT MOTION FOR ENTRY OF PROTECTIVE ORDER

The Program Suppliers represented by the Motion Picture Association, Inc. (“MPA”), the Joint Sports Claimants (“JSC”), the National Association of Broadcasters and the Commercial Television Claimants (“CTV”), the Music Claimants,¹ the Canadian Claimants Group (“CCG”), Settling Devotional Claimants (“SDC”), National Public Radio (“NPR”), Public Broadcasting Service and the Public Television Claimants (“PTV”), Multigroup Claimants (“MC”), and Major League Soccer (“MLS”) (collectively, the “Parties”) jointly request that the Judges adopt a protective order to govern the treatment of confidential materials exchanged in discovery in the above-referenced cases. The Parties have agreed on the contents of a proposed order (“Proposed Order”), which is attached as Exhibit A to this joint motion.

The reasons for entry of a protective order in complex cases involving sensitive and proprietary business information are well established. The Copyright Royalty Judges (“Judges”) have previously used protective orders as a means for allowing parties to “include information in

¹ The Music Claimants include Broadcast Music, Inc. (“BMI”), the American Society of Composers, Authors, and Publishers (“ASCAP”), SESAC Performing Rights, LLC (“SESAC”), and Global Music Rights, LLC (“GMR”).

their Direct or Rebuttal Cases that requires confidential treatment” and to “facilitate and expedite the handling of certain discovery . . . between any party and nonparty from whom information and/or documents have been requested (“Producing Party”) and any party who would receive such information and/or discovery documents (“Reviewing Party”).” *Protective Order, In the Matter of Mechanical and Digital Phonorecord Delivery Rate Adjustment Proceeding*, Docket No. 2006-3 CRB DPRA (the “DPRA Proceeding”) (August 13, 2007).

All Parties in this proceeding agree that a protective order is necessary to restrict access to certain confidential and proprietary information. In an attempt to eliminate any potential dispute over the language of the protective order and to facilitate expedited entry, the attached proposed order closely tracks the protective order entered by the Judges in the 2010-13 Cable Royalty Distribution Proceeding. *See Protective Order*, 14-CRB-0010-CD (2010-13) (March 31, 2016) (“2010-13 Order”) (attached as Exhibit B).

The Parties request expedited entry of the Proposed Order in order to facilitate the production of documents contemplated by the Judges’ January 10, 2022 *Order For Further Proceedings And Scheduling Case Events*.

Respectfully submitted,

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Dated: January 27, 2022

Certificate of Service

I certify that on January 27, 2022, I caused a copy of the foregoing to be served on all parties registered to receive notice by eCRB by filing through the eCRB filing system.

/s/ *Lucy Holmes Plovnick*

Lucy Holmes Plovnick

EXHIBIT A

COPYRIGHT ROYALTY JUDGES
The Library of Congress

In re

DISTRIBUTION OF CABLE ROYALTY FUNDS	DOCKET NO. 16-CRB-0009 CD (2014-17)
DISTRIBUTION OF SATELLITE ROYALTY FUNDS	DOCKET NO. 16-CRB-0010 SD (2014-17)

[PROPOSED] PROTECTIVE ORDER

I. The Parties

As of January 27, 2022, the participants in the captioned proceedings (parties) were: the Program Suppliers represented by the Motion Picture Association, (MPA), the Joint Sports Claimants (JSC), the National Association of Broadcasters and the Commercial Television Claimants (CTV), the Music Claimants,¹ the Canadian Claimants Group (CCG), Settling Devotional Claimants (SDC), National Public Radio (NPR), Public Broadcasting Service and the Public Television Claimants (PTV), Multigroup Claimants (MC), and Major League Soccer (MLS). These participants filed a Joint Motion for Entry of a Protective Order on January 27, 2022. The Copyright Royalty Judges (Judges) hereby grant the motion and issue this Protective Order.

II. Authority

The Judges reiterate a strong presumption in favor of the public interest in access to the records of the subject proceeding. Section 803(c)(5) of the Copyright Act nonetheless authorizes the Judges to issue protective orders “as may be appropriate to protect confidential information...” 17 U.S.C. § 803(c)(5). In prior proceedings, the Judges have issued protective orders to facilitate and expedite discovery in both rate determination and distribution proceedings.²

¹ The Music Claimants include Broadcast Music, Inc. (“BMI”), the American Society of Composers, Authors, and Publishers (“ASCAP”), SESAC Performing Rights, LLC (“SESAC”), and Global Music Rights, LLC (“GMR”).

² See, e.g., Protective Order, Docket No. 14-CRB-0010-CD (March 31, 2016) (cable royalty distribution); Protective Order, Docket No. 2006-3 CRB DRPA (Aug. 13, 2007) (“mechanical” rate adjustment).

III. Protected Material

Section 803(c)(5) of the Copyright Act does not define “confidential information.” In protection orders in prior proceedings, the Judges have defined “confidential information” to include proprietary or private business information, in any form or format, the disclosure of which would damage the party producing documents or information to another party or other parties in this proceeding (Producing Party), grant unfair advantage to the party receiving documents or information from another party in this proceeding (Receiving Party), or inhibit the ability of the Producing Party to obtain like information in the future. The Judges adopt the same definition for the instant proceeding.

IV. Exemptions

Certain material is exempt from the requirements of this Protective Order, namely, documents and information that:

(1) may be found in the public records of the Copyright Royalty Board, the Copyright Office, or any other federal or state governmental agency;

(2) was, is, or during the pendency of the subject proceeding becomes, legitimately, public information; or

(3) contains an aggregate of quantitative information derived from protected materials, so long as no entity can manipulate the information in a way to reveal the protected materials.

V. Procedure

A. Production

The Producing Party shall meet the following requirements.

(1) The Producing Party is responsible for marking with a conspicuous label of **“RESTRICTED — Subject to Protective Order in Docket Nos. 16-CRB-0009-CD and 16-CRB-0010-SD (2014-17)”** all material that the Producing Party in good faith asserts is protected by this order (Restricted material). The Producing Party shall mark Restricted portions with highlighting or brackets and shall do so to the narrowest extent possible to maintain confidentiality.

(2) The Producing Party shall deliver with all Restricted materials an affidavit or declaration signed under penalty of perjury listing all Restricted materials and the basis for the designation.

B. Receipt

The Receiving Party shall maintain the confidentiality of Restricted material.

The Receiving Party, *by and through counsel of record in this proceeding*, shall execute and abide by a Non-Disclosure Certificate, substantially in the form attached to this order as “Exhibit A.” Counsel for the Receiving Party shall limit access to Restricted material to:

- (1) counsel of record in this proceeding for the Receiving Party, including that counsel’s staff required by involvement in this proceeding to view Restricted material;
- (2) principals or counsel of any party or claimant in this proceeding represented by the Receiving Party and employees of the same, to the extent required by their respective positions and duties to view the Restricted material to assist in the Receiving Party’s presentation to the Judges;
- (3) litigation support contractors, including consulting experts, that the Receiving Party and counsel of record deem necessary, for the sole purpose of assisting with this proceeding; and
- (4) independent experts necessary for preparation of evidence for this proceeding.

C. Use of Restricted Materials

When a party includes Restricted material in filings with the Judges, the party shall file simultaneously:

- (1) the Restricted material under seal,
- (2) redacted papers for inclusion in the Judges’ public record, and
- (3) a “redaction log” listing for every item claimed as Restricted with
 - a. identification of the document or other source including title, page number, and Producing Party;
 - b. the basis or bases for the redaction; and
 - c. a description of the material sufficient to permit any entity not entitled to view the Restricted material (Reviewing Party) to challenge the designation of the material as “Restricted.”

Within 21 days after the conclusion of this proceeding,³ the Receiving Party shall return to the Producing Party all Restricted material including any additional copies, notes, or records in any form reflecting the contents of the Restricted material. In the alternative, the Receiving Party may destroy the Restricted material, copies, notes, and records and shall tender to counsel for the Producing Party an affidavit or declaration under penalty of perjury verifying that they have been destroyed. However, counsel for the Receiving Party may, in the interest of a complete record, retain one copy of the Restricted material in original form for archive purposes only. The archive

³ The conclusion of this proceeding shall occur at the resolution of all available avenues of judicial review.

materials shall be maintained as confidential records, subject to the terms of this Protective Order.

D. Objections to the Designation of Restricted Materials

If:

(1) a Receiving Party wishes to disclose Restricted materials to any person to whom disclosure is not authorized by this Protective Order,

(2) a Receiving Party or Reviewing Party wishes to object to the designation of certain information or materials as Restricted, or

(3) a Reviewing Party seeks access to Restricted material in order to respond to a filing with the Judges,

then the Receiving Party or Reviewing Party shall first serve written notice of the proposed disclosure or objection upon counsel for the Producing Party, identifying with particularity each portion of the Restricted material at issue. Counsel for the Producing Party and the Receiving Party or Reviewing Party shall undertake negotiations to resolve disputes as to the requested disclosure or the validity of the claim to protection.

If a Producing Party declines to acquiesce in the requested disclosure or to agree that the information should not be classified as Restricted material, the Producing Party shall notify the Receiving Party or Reviewing Party in writing of the reasons therefor within three (3) business days of receipt of the written notice. A Receiving Party or Reviewing Party may then move the Judges for:

(1) modification of this Protective Order,

(2) a determination that the Restricted material at issue should not remain Restricted, and in the case of a motion by a Reviewing Party, for an order requiring production to it of the Restricted material under the same limitations that apply to a Receiving Party, or

(3) for such other ruling as is appropriate.

The moving party shall serve counsel for the Producing Party and all other parties to this proceeding with a copy of the motion. The Producing Party shall bear the burden of justifying the limitation it seeks to impose.

VI. Failure to Comply

The Judges may sanction violations of this protective order as they deem appropriate, to the fullest extent permitted by law, including exclusion of evidence obtained, developed, or handled in any way contrary to the requirements in this protective order.

SO ORDERED.

Copyright Royalty Judge

EXHIBIT A

COPYRIGHT ROYALTY JUDGES
The Library of Congress

In re

DISTRIBUTION OF CABLE ROYALTY FUNDS	DOCKET NO. 16-CRB-0009 CD (2014-17)
DISTRIBUTION OF SATELLITE ROYALTY FUNDS	DOCKET NO. 16-CRB-0010 SD (2014-17)

[PROPOSED] NON-DISCLOSURE CERTIFICATE

I certify that:

1. I understand that certain Restricted materials provided to me in connection with the captioned proceeding are subject to the terms and restrictions of the Protective Order entered on [DATE];
2. I have received and read the Protective Order and I have no unanswered questions regarding the content or implications of the Protective Order;
3. I and any firm designated below qualify under the Protective Order to have access to Restricted materials;
4. I and any firm designated below agree to be bound by the Protective Order;
5. I understand that I shall not disclose or use the contents of the Restricted materials, and any notes, memoranda, or any other form of information reflecting the contents of the Restricted materials, other than in accordance with the terms of the Protective Order;
6. When informed by counsel for my client, I shall return or destroy any Restricted materials as provided by the Protective Order; and
7. I understand that a violation of this certificate constitutes a violation of an order of the Copyright Royalty Judges.

I represent that I am authorized to represent and sign on behalf of any Organization that is identified below and to bind agents and employees of the Organization to the terms of the Protective Order.

Date : _____

PRINT NAME

Title: _____

Organization: _____

EXHIBIT B

COPYRIGHT ROYALTY JUDGES
The Library of Congress

In re

**DISTRIBUTION OF CABLE ROYALTY
FUNDS**

**CONSOLIDATED PROCEEDING
NO. 14-CRB-0010-CD
(2010-13)**

PROTECTIVE ORDER

I. The Parties

As of March 14, 2016, the participants in the captioned proceeding (parties) were: the Program Suppliers represented by the Motion Picture Association of America (MPAA), the Joint Sports Claimants (JSC), the National Association of Broadcasters (NAB), the Music Claimants,¹ the Canadian Claimants Group (CCG), Settling Devotional Claimants (SDC), National Public Radio (NPR), Public Broadcasting Service and the Public Television Claimants (PTV), Multigroup Claimants (MC), Spanish Language Producers (SLP), Major League Soccer, and Professional Bull Riders.

These participants filed a Joint Motion for Entry of a Protective Order on March 21, 2016. The Copyright Royalty Judges (Judges) hereby grant the motion and issue this Protective Order.

II. Authority

The Judges reiterate a strong presumption in favor of the public interest in access to the records of the subject proceeding. Section 803(c)(5) of the Copyright Act nonetheless authorizes the Judges to issue protective orders “as may be appropriate to protect confidential information....” 17 U.S.C. § 803(c)(5). In prior proceedings, the Judges have issued protective orders to facilitate and expedite discovery in both rate determination and distribution proceedings.²

III. Protected Material

Section 803(c)(5) of the Copyright Act does not define “confidential information.” In protection orders in prior proceedings, the Judges have defined “confidential information” to include proprietary or private business information, in any form or format, the disclosure of

¹ The Music Claimants include Broadcast Music, Inc. (BMI), the American Society of Composers, Authors, and Publishers (ASCAP), and SESAC, Inc. (SESAC).

² See, e.g., Protective Order, Docket No. 2008-2 CRB CD 2000-2003 (Phase II) (Jul. 10, 2012) (cable royalty distribution); Protective Order, Docket No. 2006-3 CRB DRPA (Aug. 13, 2007) (“mechanical” rate adjustment).

which would damage the Producing Party, grant unfair advantage to the Receiving Party, or inhibit the ability of the Producing Party to obtain like information in the future. The Judges adopt the same definition for the instant proceeding.

IV. Exemptions

Certain material is exempt from the requirements of this Protective Order, namely, documents and information that:

- (1) may be found in the public records of the Copyright Royalty Board, the Copyright Office, or any other federal or state governmental agency;
- (2) was, is, or during the pendency of the subject proceeding becomes, legitimately, public information; or
- (3) contains an aggregate of quantitative information derived from protected materials, so long as no entity can manipulate the information in a way to reveal the source or context of the information.

V. Procedure

A. Production

Any party producing documents or information to another party or other parties in this proceeding (Producing Party) shall meet the following requirements.

- (1) The Producing Party is responsible for marking with a conspicuous label of **“RESTRICTED — Subject to Protective Order in Docket No. 14-CRB-0010-CD (2010-13)”** all material that the Producing Party in good faith asserts is protected by this order (Restricted material). The Producing Party shall mark Restricted portions with highlighting or brackets and shall do so to the narrowest extent possible to maintain confidentiality.
- (2) The Producing Party shall deliver with all Restricted materials an affidavit or declaration signed under penalty of perjury listing all Restricted materials and the basis for the designation.

B. Receipt

Any party receiving documents or information from another party in this proceeding (Receiving Party) shall maintain the confidentiality of Restricted material.

The Receiving Party, *by and through counsel of record in this proceeding*, shall execute and abide by a Non-Disclosure Certificate, substantially in the form attached to this order as “Exhibit A.” Counsel for the Receiving Party shall limit access to Restricted material to:

- (1) counsel of record in this proceeding for the Receiving Party, including that counsel's staff required by involvement in this proceeding to view Restricted material;
- (2) principals or counsel of any party or claimant in this proceeding represented by the Receiving Party and employees of the same, to the extent required by their respective positions and duties to view the Restricted material to assist in the Receiving Party's presentation to the Judges;
- (3) litigation support contractors, including consulting experts, that the Receiving Party and counsel of record deem necessary, for the sole purpose of assisting with this proceeding; and
- (4) independent experts necessary for preparation of evidence for this proceeding.

C. Use of Restricted Materials

When a party includes Restricted material in filings with the Judges, the party shall file simultaneously:

- (1) the Restricted material under seal,
- (2) redacted papers for inclusion in the Judges' public record, and
- (3) a "redaction log" listing for every item claimed as Restricted with
 - a. identification of the document or other source including title, page number, and Producing Party;
 - b. the basis or bases for the redaction; and
 - c. a description of the material sufficient to permit any entity not entitled to view the Restricted material (Reviewing Party) to challenge the designation of the material as "Restricted."

Within 21 days after the conclusion of this proceeding,³ the Receiving Party shall return to the Producing Party all Restricted material including any additional copies, notes, or records in any form reflecting the contents of the Restricted material. In the alternative, the Receiving Party may destroy the Restricted material, copies, notes, and records and shall tender to counsel for the Producing Party an affidavit or declaration under penalty of perjury verifying that they have been destroyed. However, counsel for the Receiving Party may, in the interest of a complete record, retain one copy of the Restricted material in original form for archive purposes only. The archive materials shall be maintained as confidential records, subject to the terms of this Protective Order.

³ The conclusion of this proceeding shall occur at the resolution of all available avenues of judicial review.

D. Objections to the Designation of Restricted Materials

If:

- (1) a Receiving Party wishes to disclose Restricted materials to any person to whom disclosure is not authorized by this Protective Order,
- (2) a Receiving Party or Reviewing Party wishes to object to the designation of certain information or materials as Restricted, or
- (3) a Reviewing Party seeks access to Restricted material in order to respond to a filing with the Judges,

then the Receiving Party or Reviewing Party shall first serve written notice of the proposed disclosure or objection upon counsel for the Producing Party, identifying with particularity each portion of the Restricted material at issue. Counsel for the Producing Party and the Receiving Party or Reviewing Party shall undertake negotiations to resolve disputes as to the requested disclosure or the validity of the claim to protection.

If a Producing Party declines to acquiesce in the requested disclosure or to agree that the information should not be classified as Restricted material, the Producing Party shall notify the Receiving Party or Reviewing Party in writing of the reasons therefor within three (3) business days of receipt of the written notice. A Receiving Party or Reviewing Party may then move the Judges for:

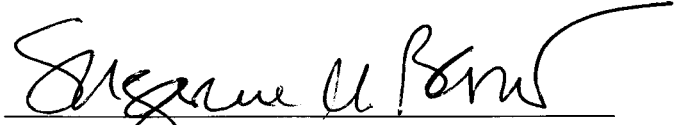
- (1) modification of this Protective Order,
- (2) a determination that the Restricted material at issue should not remain Restricted, and in the case of a motion by a Reviewing Party, for an order requiring production to it of the Restricted material under the same limitations that apply to a Receiving Party, or
- (3) for such other ruling as is appropriate.

The moving party shall serve counsel for the Producing Party and all other parties to this proceeding with a copy of the motion. The Producing Party shall bear the burden of justifying the limitation it seeks to impose.

VI. Failure to Comply

The Judges may sanction violations of this protective order as they deem appropriate, to the fullest extent permitted by law, including exclusion of evidence obtained, developed, or handled in any way contrary to the requirements in this protective order.

SO ORDERED.



Suzanne M. Barnett
Chief Copyright Royalty Judge

DATED: March 31, 2016

EXHIBIT A

**COPYRIGHT ROYALTY JUDGES
The Library of Congress**

In re

**DISTRIBUTION OF CABLE ROYALTY
FUNDS**

**CONSOLIDATED PROCEEDING
NO. 14-CRB-0010-CD
(2010-13)**

NON-DISCLOSURE CERTIFICATE

I certify that

1. I understand that certain Restricted materials provided to me in connection with the captioned proceeding are subject to the terms and restrictions of the Protective Order entered on March 31, 2016;
2. I have received and read the Protective Order and I have no unanswered questions regarding the content or implications of the Protective Order;
3. I and any firm designated below qualify under the Protective Order to have access to Restricted materials;
4. I and any firm designated below agree to be bound by the Protective Order;
5. I understand that I shall not disclose or use the contents of the Restricted materials, and any notes, memoranda, or any other form of information reflecting the contents of the Restricted materials, other than in accordance with the terms of the Protective Order;
6. When informed by counsel for my client, I shall return or destroy any Restricted materials as provided by the Protective Order; and
7. I understand that a violation of this certificate constitutes a violation of an order of the Copyright Royalty Judges.

I represent that I am authorized to represent and sign on behalf of any Organization identified below and to bind agents and employees of the Organization to the terms of the Protective Order.

Date: _____

PRINT NAME

Title: _____

Organization: _____